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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,476	07/02/2003	Robert W. Boescl	029573-0701	9528
27433 7590 07/31/2007 FOLEY & LARDNER LLP 321 NORTH CLARK STREET SUITE 2800 CHICAGO, IL 60610-4764			EXAMINER SMITH, CREIGHTON H	
			ART UNIT 2614	PAPER NUMBER
			MAIL DATE 07/31/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/613,476	Applicant(s) BOESEL ET AL.	
	Examiner Creighton H. Smith	Art Unit 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6 and 12-20 is/are allowed.
- 6) ☒ Claim(s) 7 is/are rejected.
- 7) ☒ Claim(s) 8-11 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3.27.07, 5.15.07</u> | 6) <input type="checkbox"/> Other: ____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hershey et al, U.S. Patent Publication #2001/0002199 in view of O'Toole et al, U.S. Patent Publication #2003/0099210 or Greenblat et al, U.S. Patent Publication #2003/0200343

Hershey et al disclose in Fig. 1 and ¶-0023 a multi-technology telecommunications network (10) composed of a plurality of sub-networks. Network (110) includes a wireless network (12), satellite network (14), LANS and WANS, token ring (17), FDDI (18), SONET (19), and ATM switch (20). In ¶-0008 Hershey et al disclose that the system modules enable the processing of asynchronous, and in ¶-0033 discloses that processor (110) processes the asynchronous signals extracted by section (50). In ¶¶-0002 & 0003 Hershey et al disclose a variety of multi-protocol signals that are multiplexed, with some of the high bandwidth multiplexing protocols listed in ¶-0003. Hershey et al never specifically come out and disclose that their, although a case for inherency can certainly be made that what is controlling the processor are programmed instructions or computer codes. However, O'Toole et al disclose in ¶-0484, that "a code or program controls the operation of the processor, and Greenblat discloses similarly in ¶-0779. To have similarly used O'Toole's teaching of a programming code or set of instructions controlling the processor and used that in Hershey et al would have been obvious to a person having ordinary skill in the art, because the skilled

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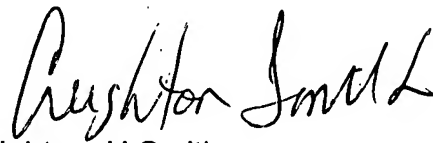
practitioner in this art will realize that a processor has to run on "something" and that "something" is a computer code.

Claims 8-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art fails to disclose updating the code/instructions ***based upon processing factors***.

Claims 1-6 and 12-20 are allowed. The prior art fails to show applicant's "referencing" step.

Any inquiry concerning this communication should be directed to Creighton H. Smith at telephone number 571/272-7546.

27 JUL '07


Creighton H Smith
Primary Examiner
Art Unit 2614